

IN THE UNITED STATES DISTRICT COURT

FIDEL DAVIS

§

V.

§

CIVIL ACTION NO. 5:15cv48

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION

OF THE UNITED STATES MAGISTRATE JUDGE

AND ENTERING FINAL JUDGMENT

The Plaintiff Fidel Davis, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Plaintiff originally filed his lawsuit in the Beaumont Division of the Eastern District of Texas and named as Defendants Officer C. Phillips, Warden Jeff Calfee, Dr. Reginald Stanley, and the Texas Department of Criminal Justice, Correctional Institutions Division. The Court severed the claims against Officer Phillips, Warden Calfee, and Dr. Stanley and transferred those claims into the present lawsuit in the Texarkana Division. Warden Calfee and Dr. Stanley have previously been dismissed.

Officer Phillips filed a motion to dismiss, and the Magistrate Judge issued a Report recommending the motion be granted. In response, Plaintiff filed a motion asking permission to withdraw Officer Phillips from the complaint. This is in effect a motion for voluntary dismissal of the claims against Officer Phillips.

The Court has reviewed the pleadings and the Report of the Magistrate Judge and has determined this Report is correct. Nonetheless, Plaintiff's request for voluntary dismissal of Officer

Phillips should be granted. *See Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977) (plaintiff has absolute right to dismiss his complaint under Rule 41(a), Fed. R. Civ. P., prior to the filing of an answer or motion for summary judgment); *Thomas v. Phillips*, 83 F.App'x 661, 2003 WL 22965565 (5th Cir., December 17, 2003) (citing *Carter*). It is accordingly


ORDERED the Plaintiff's request for voluntary dismissal of his claims against Officer Phillips (docket no. 84) is **GRANTED**. It is further

ORDERED the claims against Officer Phillips are **DISMISSED WITHOUT PREJUDICE** on the Plaintiff's motion. Because these are the last remaining claims in the lawsuit, it is further

ORDERED the above-styled civil action is **DISMISSED** without prejudice as to Officer Phillips and **DISMISSED** with prejudice for purposes of proceeding *in forma pauperis* for failure to state a claim upon which relief may be granted as to the Defendants Warden Calfee and Dr. Stanley, as stated in the Court's previous order of partial dismissal (docket no. 73). Finally, it is

ORDERED any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 16th day of October, 2017.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE